

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD G. ANTHONY,

Defendant.

4:12-CR-3031

ORDER

This matter is before the Court upon initial review of the motion to vacate under [28 U.S.C. § 2255](#) ([filing 116](#)) filed by the defendant. The Court's initial review is governed by Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, which provides:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

The defendant's motion is based upon the Supreme Court's decision in *Johnson v. United States*, in which the Court held that the residual clause of the Armed Career Criminal Act of 1984, [18 U.S.C. § 924\(e\)\(2\)\(B\)\(ii\)](#), is unconstitutionally vague. [135 S. Ct. 2551, 2563 \(2015\)](#). The defendant alleges that he was sentenced in part based upon that section. See [filing 116](#).

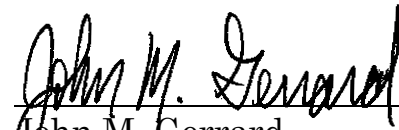
The Court cannot definitively say that the defendant is not entitled to relief. The Court will, therefore, direct the United States attorney to respond to the defendant's motion, addressing the issues set forth above as well as any other arguments that the government believes to be relevant to the Court's disposition of this motion.

IT IS ORDERED:

1. The defendant's Motion to Compel Answer ([filing 123](#)) is granted.
2. The United States attorney shall respond to the defendant's motion to vacate ([filing 116](#)) on or before September 7, 2016.
3. The defendant may reply in support of his motion on or before September 19, 2016.

Dated this 8th day of August, 2016.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge